

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In Re:
AHRON BERLIN

Case No.: 12-74600-reg
Chapter 7

Debtor.

-----x
ELLIOT ZARETSKY, HAROLD ZARETSKY,
SHIRLEY ZARETSKY AND MAXI-AIDES, INC.

Plaintiffs.

Adv. Pro. No.: 12-08371-reg

-against-

AHRON BERLIN,

Defendant.

-----x

APPELLANT'S DESIGNATION OF RECORD AND
STATEMENT OF ISSUES ON APPEAL

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U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF
NEW YORK

On November 20, 2014 a Notice of Appeal to District Court was Filed by Ahron Berlin from a decision and judgment issued on June 19, 2014. The undersigned appellant respectfully requests that the record on this appeal include the following items and issues (as well as all exhibits attached thereto):

- 1) (Dkt. No. 1) Complaint *Filed & Entered: 09/24/2012*

Docket Text: Filed & Entered 09/24/2012 Complaint Adversary case 8-12-08371. Complaint by Elliot Zaretsky against Ahron Berlin. Fee Amount \$293. Nature(s) of Suit: (68 (Dischargeability - 523(a)(6), willful and malicious injury)). (Attachments: # (1) Exhibit A part 1# (2) Exhibit A part 2# (3) Exhibit B# (4) Exhibit C# (5) Exhibit D# (6) Exhibit E# (7) Exhibit F# (8) Exhibit G) (McAuliffe, Michael)

2) (**Dkt. No. 2**) Summons and Notice of Pre-Trial Conference *Filed & Entered: 09/25/2012*
Docket Text: Summons and Notice of Pre-Trial Conference issued by Clerk's Office against Ahron Berlin Answer Due: 10/25/2012 Pre-Trial Conference set for 11/7/2012 at 09:30 AM at Courtroom 860 (Judge Grossman), CI, NY. (sap)

3) (**Dkt. No. 3**) Affidavit/Certificate of Service *Filed & Entered: 10/02/2012*
Docket Text: Summons Service Executed on 10/2/12 Filed by Michael G McAuliffe on behalf of Elliot Zaretsky (RE: related document(s)! Complaint filed by Plaintiff Elliot Zaretsky, 2 Summons and Notice of Pre-Trial Conference (Auto)) (McAuliffe, Michael) Modified on 10/3/2012 (sld)

4) (**Dkt. No. 4**) Answer to Complaint *Filed & Entered: 10/24/2012*
Docket Text: Answer to Complaint Filed by Ahron Berlin

5) (**Dkt. No. 6**) Motion For Summary Judgment *Filed & Entered: 05/30/2013*
Docket Text: Motion For Summary Judgment Filed by Michael G McAuliffe on behalf of Elliot Zaretsky. Hearing scheduled for 6/26/2013 at 09:30 AM at Courtroom 860 (Judge Grossman), CI, NY. (Attachments: # 1 statement # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C # 5 Exhibit D # 6 Exhibit D part 2 # 7 Exhibit E # 8 Exhibit F # 9 Exhibit G # K) Exhibit H # U Exhibit I # 12 Exhibit J # 13 Exhibit K # 14 Memorandum of Law # 15 Affidavit of Service) (McAuliffe, Michael)

6) (**t. No. 7**) Letter of Adjournme *Filed & Entered: 05/31/2013*
Docket Text: Letter of Adjournment: Hearing rescheduled from June 3, 2013 at 9:30 a.m. to June 26, 2013 at 9:30 a.m. Filed by Michael G McAuliffe on behalf of Elliot Zaretsky (McAuliffe, Michael). Related document(s) 2 Summons and Notice of Pre-Trial Conference (Auto). Modified on 6/3/2013 to add related document, (mtt)

7) (**Dkt. No. 8**) Letter *Filed & Entered: 06/05/2013*

Docket Text: Letter Filed by Ahron Berlin (RE: related document(s)6 Motion for Summary Judgment filed by Plaintiff Elliot Zaretsky) (srm)

8) **(Dkt. No. 9)** Letter

Filed & Entered: 06/11/2013

Docket Text: Letter *confirming adjournment, extension of time and deadlines to respond* Filed by Michael G McAuliffe on behalf of Elliot Zaretsky (RE: related document(s)6 Motion for Summary Judgment filed by Plaintiff Elliot Zaretsky) (McAuliffe, Michael)

9) **(Dkt. No. 10)** Motion for Summary Judgment
06/25/2013 *Entered* 07/02/2013

Filed:

Docket Text: Cross Motion For Summary Judgment *in favor of defendant and against plaintiffs* Filed by Ahron Berlin (related document(s)6). Hearing scheduled for 7/22/2013 at 09:30 AM at Courtroom 860 (Judge Grossman), CI, NY. (Attachments: # i Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit) (dmc)

10) **(Dkt. No. 11)** Memorandum of Law in Support *Filed:* 06/25/2013
Entered 07/02/2013

Docket Text: Memorandum of Law in Support *in opposition to plaintiffs' motion and in support of defendant's motion.* Filed by Ahron Berlin (RE: related document(s)6 Motion for Summary Judgment filed by Plaintiff Elliot Zaretsky, K) Motion for Summary Judgment filed by Defendant Ahron Berlin) (dmc)

11) **(Dkt. No. 12) REPLY**

Filed & Entered : 07/15/2013

Docket Text: Reply *Affirmation in Further Support and in Opposition* Filed by Michael G McAuliffe on behalf of Elliot Zaretsky (RE: related document(s)6 Motion for Summary Judgment filed by Plaintiff Elliot Zaretsky, 10 Motion for Summary Judgment filed by Defendant Ahron Berlin) (Attachments: # I Exhibit A # 2 Affidavit of Service) (McAuliffe, Michael)

12) **(Dkt. No. 13) Response**

Filed & Entered : 07/18/2013

Docket Text: Response *Memorandum in Support of Defendants' Cross-motion and in Opposition to Plaintiffs' Motion* Filed by Ahron Berlin (RE: related document(s) 10) Motion for Summary Judgment filed by Defendant Ahron Berlin, 11_ Memorandum of Law in Support filed by Defendant Ahron Berlin) (dhc)

13) **(Dkt. No. 14) Pre-Trial Order** Filed& Entered : 07/24/2013

Docket Text: Final Pre-Trial Order. A Trial will be held on 11/5/13 @ 10:00 am in Courtroom 860, United States Bankruptcy Court, CI NY Signed on 7/24/2013 Joint Pre-Trial Memorandum due by 10/29/2013. (sld)

14) **(Dkt. No. 15) Motion to Withdraw as Attorney** *Filed & Entered: 10/21/2014: erminated: 10/30/2013*

Docket Text: Proposed Motion to Withdraw as Attorney for Elliot Zaretsky, Harold Zaretsky, Shirley Zaretsky and Maxi Aides, Inc. Filed by Michael G McAuliffe on behalf of Elliot Zaretsky. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Proposed Order) (McAuliffe, Michael)

15) **(Dkt. No. 16) Order to Schedule Hearing** Filed& Entered : 10//23/2013 (Generic)

Docket Text: Order to Show Cause for an Order Relieving the Law Offices of Michael G. McAuliffe, Esq. as Counsel to Elliot Zaretsky, Harold Zaretsky, Shirley Zaretsky and Maxi-Aides, Inc. (RE: related document(s)15 Motion to Withdraw as Attorney filed by Plaintiff Elliot Zaretsky). Signed on 10/22/2013. Hearing scheduled for 10/28/2013 at 09:30 AM at Courtroom 860 (Judge Grossman), CI, NY. (srm)

16) **(Dkt. No. 18) Response** Filed& Entered : 10/23/2013

Docket Text: Response withdrawing Michael G McAuliffe as attorney Filed by Elliot Zaretsky (RE: related document(s)16 Order to Schedule Hearing (Generic)) (amh)

17) **(Dkt.No. 20) Affirmation in Opposition** Filed& Entered : 10/25/2013

Docket Text: Affirmation in Opposition Filed by Ahron Berlin (RE: related document(s) 15 Motion to Withdraw as Attorney filed by Plaintiff Elliot Zaretsky, 16 Order to Schedule Hearing Generic)) (mem)

18) **(Dkt.No. 21) Notice of Appearance** Filed& Entered : 10/28/2013

Docket Text: Notice of Appearance and Request for Notice Filed by Michael A Miranda on behalf of Elliot Zaretsky (Miranda, Michael)

19) (Dkt. No. 22) Joint Pre-Trial Memorandum Filed& Entered : 10/29/2013
Docket Text: Joint Pre-Trial Memorandum Filed by Michael A Miranda on behalf of Maxi-Aids, Inc., Shirley Zaretsky, Harold Zaretsky, Elliot Zaretsky (RE: related document(s)14 Pre-Trial Order) (Miranda, Michael)

20) (Dkt.No. 24) **Order on Motion to Withdraw as Attorney** Filed& Entered : 10/30/2013 *Docket Text:* Order Granting Motion for Michael G McAuliffe to Withdraw As Attorney for the the Zaretsky Parties. (Related Doc # 1_5) Signed on 10/30/2013. (sld)

21) (Dkt. No. 25) **Joint Pre-Trial Memorandum** Filed& Entered : 10/30/2013
Docket Text: Defendant's Amended Pre-Trial Memorandum Filed by Ahron Berlin (cjm)

22) . (Dkt No. 26) **Statement** Filed& Entered : 10/30/2013
Docket Text: Pre-Trial Brief by Debtor/Defendant Ahron Berlin Filed by Ahron Berlin (cjm)

23) (Dkt. No. 27) Notice of Appearance Filed& Entered : 10/30/2013
Docket Text: Notice of Appearance and Request for Notice Filed by Robert Hewitt on behalf of Maxi-Aids, Inc., Elliot Zaretsky, Harold Zaretsky, Shirley Zaretsky (sld)

24) (Dkt. No. 31) **Exhibit** Filed& Entered : 11/01/2013
Docket Text: Exhibit B-F Filed by Ahron Berlin (RE: related document(s)26 Statement filed by Defendant Ahron Berlin) (amh)

25) (Dkt. No. 32) **Transcript Court Ordered (All Other Judges)(AP)** Filed& Entered : 03/05/2014

Docket Text: Transcript & Notice regarding the hearing held on 11/05/2013. Pursuant to the new policy adopted by the Judicial Conference, transcripts are available for inspection

only at the Office of the Clerk or may be purchased from the court transcriber. [Please see the courts website for contact information for the Transcription Service Agency]. (RE: related document(s) Hearing Held (Case Owned AP)). Notice of Intent to Request Redaction Due By 03/12/2014. Redaction Request Due By 03/26/2014. Redacted Transcript Submission Due By 04/7/2014. TRANSCRIPT ACCESS WILL BE ELECTRONICALLY RESTRICTED THROUGH 06/3/2014 AND MAY BE VIEWED AT THE OFFICE OF THE CLERK. (Writers Cramp, Inc) Additional attachment(s) added on 3/11/2014 (sld).

26) (Dkt. No. 33) BNC Certificate of Mailing with Notice of Filing of Official Transcript (AP) Filed: 03/08/2014 Entered: 03/09/2014

Docket Text: BNC Certificate of Mailing with Notice of Filing of Official Transcript (AP) Notice Date 03/08/2014. (Admin.)

27) (Dkt. No. 34) Court's Certificate of Mailing Filed: 03/11/2014

Docket Text: Court's Service List (RE: related document(s) 32 Transcript Court Ordered (All Other Judges)(AP)) (sld)

28) (Dkt. No. 35) BNC Certificate of Mailing with Application/Notice/Order

Filed: 03/13/2014 Entered: 03/14/2014

Docket Text: BNC Certificate of Mailing with Application/Notice/Order Notice Date 03/13/2014. (Admin.)

29) (Dkt. No. 36) Opinion/Decision for External Web Page

Filed: 06/19/2014 Terminated: 06/19/2014

Docket Text: Decision after Trial that for all of the foregoing reasons, this Court finds that the Plaintiffs have proved that the Debtors actions were willful and malicious within the meaning of 11 U.S.C. § 523(a)(6). Accordingly, the Plaintiffs awards against the Debtor in the amounts set forth in the State Court judgment are nondischargeable. The Court shall enter judgment in favor

of the Plaintiffs forthwith. (RE: related document(s)! Complaint filed by Plaintiff Elliot Zaretsky). Signed on 6/19/2014 (sld)

30) (Dkt. No. 37) **Judgment** *Filed & Entered:: 06/19/2014*

Docket Text: Judgment that Pursuant to the Courts Decision After Trial, dated June 19, 2014, JUDGMENT is hereby entered in favor of the Plaintiffs. The full amount of the judgment-debt described in the Decision After Trial is hereby excepted from discharge under 11 U.S.C. § 523(a)(6). (RE: related document(s)36 Decision After Trial for External Web Page). Signed on 6/19/2014 (sld)

31) (Dkt. No. 39) **Motion to Reconsider** *Filed & Entered: : 07/03/201 Terminated: 11/07/2014*

Docket Text: Motion to Reconsider, *Alter or Amend Judgment and Decision After Trial dated June 19, 2014* Filed by Ahron Berlin (RE: related document(s)36 Opinion/Decision for External Web Page, 37 Judgment), (mem)

32) (Dkt. No. 40) **Order to Schedule Hearing** *Filed & Entered:: 09/11/2014 (Generic)*

Docket Text: Order to Schedule Hearing. Hearing scheduled for 11/5/2014 at 09:30 AM at Courtroom 860 (Judge Grossman), CI, NY. Movant shall serve a copy of this Order, the Notice of Motion and Motion by regular mail upon the Plaintiffs and counsel to the Plaintiffs on or before September 16, 2014. If objections, if any, to the relief requested in the Motion shall be served upon the Movant and filed with the Court on or before October 29, 2014. Movant shall file an affidavit of service with the Court on or before September 22, 2014. (RE: related document(s)39 Motion to Reconsider filed by Defendant Ahron Berlin). Signed on 9/11/2014. (sld)

33) (Dkt. No. 41) **Letter** *Filed & Entered:: 09/18/2014*

Docket Text: Letter Filed by Ahron Berlin (RE: related document(s)40 Order to Schedule Hearing (Generic)) (amh)

34) (Dkt. No. 43) **Motion to Withdraw as Attorney** *Filed & Entered 10/27/2014*

Docket Text: Motion to Withdraw as Attorney Filed by Michael A Miranda on behalf of Maxi-Aids, Inc., Elliot Zaretsky, Harold Zaretsky, Shirley Zaretsky. Hearing scheduled for 11/5/2014 at 09:30 AM at Courtroom 860 (Judge Grossman), CI, NY. (Miranda, Michael)

35) (Dkt. No. 44) Declaration Filed & Entered 10/27/2014

Docket Text: Declaration re: Filed by Michael A Miranda on behalf of Maxi-Aids, Inc., Elliot Zaretsky, Harold Zaretsky, Shirley Zaretsky (RE: related document(s)43 Motion to Withdraw as Attorney filed by Plaintiff Maxi-Aids, Inc., Plaintiff Elliot Zaretsky, Plaintiff Harold Zaretsky, Plaintiff Shirley Zaretsky) (Attachments: # j Exhibit) (Miranda, Michael)

36) (Dkt. No. 46) Objection Filed & Entered 10/29/2014

Docket Text: Objection of the Plaintiffs to Motion of Defendant to Reconsider, Alter or Amend Judgment Filed by Brian J Hufnagel on behalf of Maxi-Aids, Inc., Elliot Zaretsky, Harold Zaretsky, Shirley Zaretsky (RE: related document(s)39 Motion to Reconsider filed by Defendant Ahron Berlin) (Attachments: # 1 Exhibit 1 - Decision after Trial # 2 Exhibit 2 - State Court Judgment # 3 Exhibit 3 - Bankruptcy Court Judgment # 4 Exhibit 4 - Federal Complaint) (Hufnagel, Brian)

37) (Dkt. No. 47) Affidavit/Certificate of Service Filed & Entered 10/30/2014

Docket Text: Affidavit/Certificate of Service Filed by Brian J Hufnagel on behalf of Maxi-Aids, Inc., Elliot Zaretsky, Harold Zaretsky, Shirley Zaretsky (RE: related document(s)46 Objection filed by Plaintiff Maxi-Aids, Inc., Plaintiff Elliot Zaretsky, Plaintiff Harold Zaretsky, Plaintiff Shirley Zaretsky) (Hufnagel, Brian)

38) (Dkt. No. 48) Affidavit in Support Filed & Entered 10/30/2014

Docket Text: Defendants Reply in Support of motion to reconsider alter or amend Judgement Filed by Ahron Berlin (RE: related document(s)39 Motion to Reconsider filed by Defendant Ahron Berlin) (amh) Modified on 11/4/2014 (amh).

39) (Dkt. No. 49) Order on Motion to Reconsider 11/07/2014

Docket Text: Order Denying Motion To Reconsider in its entirety. (Related Doc # 39) Signed on 11/7/2014. (sld)

40) (Dkt. No. 50) Notice of Appeal 11/20/2014

Docket Text: Notice of Appeal to District Court. . Fee Amount \$298 Filed by Ahron Berlin (RE: related document(s)36 Opinion/Decision for External Web Page, 37 Judgment). Appellant Designation due by 12/4/2014. (mem

41) (**Dkt. No. 51**) **notice of Appeal** 11/20/2014

Docket Text: Notice of Appeal to District Court. . Fee Amount \$298 Filed by Ahron Berlin (RE: related document(s)49 Order on Motion to Reconsider). Appellant Designation due by 12/4/2014. (mem)

42) The record will include all the transcripts, documents stipulated, and admitted and agreed during the deposition. As well as items submitted to the Court during trial.

STATEMENT OF ISSUES ON APPEAL

1. Did the Court err in denying appellant the right to present arguments, evidence or testimony that he did not have willful or malicious intent due to never having sent or having knowledge of the libelous emails, nor of any of the acts in this alleged purported scheme claimed by appellees, where the Court erred in applying collateral estoppel.
2. Did the Court err to rely on appellees testimony for a finding of willful and malicious intent, while such testimony was replete with perjury and falsity, and appellant was denied a chance to raise or present such evidence, erring in applying collateral estoppel.
3. Did the Court err by not looking behind the State Court Judgment in applying, res judicata, Rooker-Feldman, and collateral estoppel, where the circuits have ruled that the Court had a duty to look past, when fraud in the procurement of such State Court judgment was alleged.

RESPECTFULLY SUBMITTED

Dated: December 4, 2014


AHRON BERLIN